

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

IN RE DIGITEK®  
PRODUCT LIABILITY LITIGATION

MDL NO. 1968

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THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 34  
(Production of Medical and  
Pharmacy Records of Deceased Plaintiffs)

Due to the difficulties the parties are experiencing in obtaining pertinent medical and pharmacy records of individuals who are deceased, the Court hereby enters Pretrial Order No. 34 regarding the production of such records.

In accordance with 45 C.F.R. § 164.512(e) of the Health Insurance Portability & Accountability Act ("HIPAA"), it is hereby **ORDERED** as follows:

(1) The health care covered entity identified in Exhibit A shall produce records to the requesting counsel or their designee, RecordTrak, for the dates specified on the form attached hereto as Exhibit A.

(2) Plaintiff's counsel identified on Exhibit A is considered the "personal representative," in accordance with 45 C.F.R. § 164.502(g)(4), of the deceased individual for the sole and limited purpose of collecting medical and pharmacy records. RecordTrak is authorized to collect the records on behalf of Plaintiff's counsel,

or the requesting counsel.

(3) Counsel or their designee, RecordTrak, requesting records from a health care covered entity on behalf of a deceased individual must complete Exhibit A, setting forth the name, date of birth, and social security number of the deceased individual, as well as the dates of service for those records he/she believes are reasonably related or believed to be related to the deceased's use of Digitek® and/or potentially resulting health problems and/or conditions relating to the use of such Digitek®. Counsel or RecordTrak must provide the health care covered entity a completed form Exhibit A, along with a copy of this Order.

(4) Counsel or RecordTrak shall pay reasonable costs to the health care covered entity for those costs associated with compliance with this Order, and in accordance with any applicable state law.

(5) By performing the obligations required by this Order, the health care covered entity is deemed to be in full compliance with HIPAA. See 45 C.F.R. §164.512(e).

The Clerk is directed to file this Order in 2:08-md-1968 which shall apply to each member Digitek®-related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:09-cv-00890. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided

by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at [www.wvsd.uscourts.gov](http://www.wvsd.uscourts.gov).

ENTER: August 5, 2009

  
Mary E. Stanley  
United States Magistrate Judge

**EXHIBIT A TO PRETRIAL ORDER NO. 34**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to Pretrial Order No. 34 and in accordance with 45 C.F.R. § 164.512(e) of the Health Insurance Portability & Accountability Act ("HIPAA"), you are hereby ordered to produce the records of: Name: \_\_\_\_\_ (deceased)

Date of Birth: \_\_\_\_\_ SSN: \_\_\_\_\_

For the time period: \_\_\_\_\_

To Plaintiff's counsel: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

Records requested: All medical records, including but not limited to, (cross out any that you do not wish to receive): office notes, history and physical, consultation reports, discharge summaries, discharge or transfer instructions or data, order and progress notes, laboratory results, nurses notes, emergency room records, operative reports/records, lab reports, incident reports, anesthesia records, arteriogram, venograms, angiograms, autopsy reports, billing records, code blue sheets/CPR method, progress notes, order sheets, outpatient clinic records, paramedic records, dialysis records, pathology reports, patient data cover sheet, personal property lists, pharmacy records, photographs, physical therapy sheet notes, post-op instrument count record, pre-op check list, recovery room records, scans, CAT, CT, and ultrasound records, surgical consent forms, vital signs charts, radiology studies/reports, x-ray reports.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Plaintiff's Counsel, personal representative, pursuant to 45 C.F.R. § 164.502(g)(4)